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No. 00-1796

In The
SUPREME COURT OF THE UNITED STATES

GERALD D. BUSH,
Petitioner,

v

ZEELAND PUBLIC SCHOOLS BOARD OF EDUCATION
and
CITIZENS INSURANCE CO. OF AMERICA
Respondents

On Petition For A Writ Of Certiorari
To The Supreme Court Of Michigan

PETITION FOR WRIT OF CERTIORARI

Petitioner's Reply Brief

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REPLY BRIEF

1. RESPONDENTS HAVE WAIVED ALL OBJECTIONS.

Under Rule 15.2 regarding "Briefs in Opposition" the Respondents had a duty to

> "address any perceived misstatement of fact or law in the petition that bears on what issues properly would be before the Court if certiorari were granted. Counsel are admonished that they have an obligation to the Court to point out in the brief in opposition, and not later, any perceived misstatement made in the petition. Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition."

Respondent Zeeland Public Schools chose to wave its response. (See file) Respondent Citizens Insurance Company of America made no response. As a result Petitioner suggests that both Respondents have waived all their potential objections. Rule 15.2.

2. PETITIONER HAS CALLED INTO QUESTION 3 AGENCY DECISIONS CLAIMING THEY ARE UNRELIABLE. CONSIDER ADDITIONAL EVIDENCE.

In Bush's Worker's Compensation case, consolidated here with his last two tenure cases, the ALJ contends that he found the Respondents' psychiatrist, Dr. Ager, one of four, most credible. (61a) But how did he determine this credibility? The Dr. never testified in the presence of the ALJ. In fact, only his deposition was submitted. (59a) Bush was not even invited to the

deposition and had no idea it occurred until long afterward. How can you determine credibility from a deposition?

Further it appears to violate Bush's right to be present and participate in the questioning of witnesses against him. Bush was not present (or invited) at the depositions of any Doctor before or after the hearing began. ***Snyder v Massachusetts***, 291 US 97, 78 L Ed 674, 54 S Ct 330 (1934) held that criminal defendants had a "right to be present at all stages of the trial where his absence might frustrate the fairness of the proceedings." ***Faretta v California***, 422 US 806, 819 (1975) Fn 15. Apparently, Worker's Comp. plaintiffs don't. But, obviously, no one other than Bush and the Doctors were at these appointments where they counseled him. Thus Bush is the only one who can dispute what they say now, if need be. Bush contends he was denied Due Process of law in this respect.

Secondly, this ALJ did not consider any emotional damages to Bush. Both of the two psycho Doctors Bush seen before he filed the Worker's Compensation case stated in deposition testimony Bush was emotional when he seen them. (WC Beyer, 58a; Westendorp, 59a) Lampson, who seen Bush after he filed the WC case, also stated in deposition Bush was emotional. (59a)

Bush was emotional long before his last day of work. (See WC Westendorp depo 6-20; V2 p 114-119) Supt. Harper agreed Bush was "very emotionally uptight . . . and distraught" by the end of 1992-93. (WC V 6? p 582) He was emotional in meetings with Supt. Feenstra before and after his last day of work (WC V6 p 540-543, V10 894) and during the hearings a number of times, which ended 4 years later, in 1997. (Last day of work, August 30, 1993. WC V1, 69-73, V6 p 542-543, V10 p 843, 864, 874, 879 The record even indicated that Jones had numerious employees cry in his office. (WC Jones V6 p 499) But amazingly the ALJ never took note of any of Bush's continued emotion. (Or Tift's.) Not once. Yet in a prior case the ALJ noted emotion.

Shouldn't the record and decisions in these types of case reflect such emotion? Bush thinks so.

It is emotionally and psychologically devastating to be forced from one's profession without Due Process of law. Plus many other damages result. Dr. Beyer's deposition indicated that Bush had told him he had 3 rental properties that were not rented and had roofs needing repair in 1993-94. (Beyer #1, p 52-54) Plus a host of other problems caused by Jones' thief of Bush's time. (See WC V5 p 354-358) Does that impact emotions? YES!

3. THE COURT SHOULD REVIEW THIS CASE BECAUSE TERMINATION IS EQUIVALENT TO EXPULSION FROM THE TEACHING PROFESSION AND THUS SEIZURE OF THE PROPERTY RIGHT OF EMPLOYMENT IN THIS CHOSEN FIELD.

Teaching school is suppose to be a profession. Like other types of property, it requires a substantial investment. A minimum 4 years of college is required, and maybe 5 today, plus more continuing education after being employed. (Bush had a BS plus 30 hours. WC V1 p 16, V5 p 361) The investment in time, money and effort is substantial. Loss of this employment property right should not be viewed lightly, as the Respondents and the State of Michigan do.

Additionally, it is a fact that a teacher losing his job after 10 years is effectively barred from the profession in this state. Why? Several reasons. First, because union negotiated wage scales reward the teacher for years of service. Thus, principals and personnel officials, such as Jones, hire new inexperienced teachers to save money. (About 50%.) Typically they refuse to hire experienced teachers with few exceptions. (WC V5 p 358-361, 381-382, V6 p 520-529) The exceptions are almost exclusively football and basketball coaches, and possibly other coaches, with good win/loss records. (WC V5

464-466) Other than these exceptions, good teachers who desire to move are virtually out of luck. Bush tried when forced to by Jones. (WC V1 p 32-34) Furthermore, if they move they now can lose tenure protections for at least a year or more, MCL 38.92. (71a) (WC V6 p 520-529) Unethical schools have enticed experienced teachers and then dropped them after a year with no repercussions. It is another way to help clean house.

Thus it is important that, at least, the Due Process of law, as found by the U.S. Supreme Court, be strictly enforced as unethical boards, administrators and attorneys force teachers out the doors and effectively out of the profession without the required "reasonable or just cause." MCL 38.101 (73a) Bush and Tift both suffered this devastating fate. (WC Tift V 10, 813-841)

Of course doing so, opens the doors to hire new and younger coaches and teachers. (WC V4, p 254) Thus the school's administrators benefit. They can boast of their teams accomplishments, while their classroom instruction quality declines. (See Bush WC testimony re: suspensions, subs, drop outs, failures etc.) These facts are important in this case because Jones was a former college football player and high school coach.

Michigan's new scheme to deprive teachers of income and then force them to appeal should be reviewed by this Court. It forces teachers on the edge of poverty, or in it, because of job and income loss, to then hire attorneys (or spend 1000's of hours and years of their life doing it pro se), pay witness fees - provided they are allowed to call any - and mileage (T5 V 1, p 126, 128, 183), court fees, printers, etc. and to perfect appeals. Then should the teacher win, there is no guarantee of reimbursement in the Act for any of these huge expenses. (See news article on Sprik, July 8, 1981 Grand Rapids Press) Petitioner believes 42 USC sec 1988 should apply.

But in addition, the teacher is expected to look for and accept some work as "mitigation" and if he doesn't

even look or accept work, then he is docked for those years should he ever recover. (See Sprik article. ***Morris v Clawson Tank Co***, 459 Mich 256; 587 NW2d 253 (1998)) Zeeland attempted to pressure Bush in that respect. (WC V 10, p 894) There is no consideration of the collateral damages suffered by the employee. Doctor testimony revealed Bush's rental properties were vacant because he didn't have time to deal with them. (See Beyer Depo #1, p 52-54) But that does not matter.

Furthermore, it is evident from the record that the School Board's attorney in Tenure cases gets to set the agenda. He gets to decide what issues will be argued and thus what evidence is entered and witnesses are called by the teacher, if any. (T5 V 1, p 126-138) Since Bush didn't have any witnesses (other than those the Board had listed - most of whom they did not call) to deal with the narrow time frame established by the Board, he couldn't call any.

4. THE COURT SHOULD DECIDE IF ATTORNEY DISQUALIFICATION FOR MISCONDUCT IS AVAILABLE TO STATE PRO SE LITIGANTS.

No discipline is available to attorneys who lie while representing government (and other) clients. Appeals to the Attorney Grievance Commission are rarely, if ever, considered when the person complaining is not the client, no matter what the conduct. Bush tried. (WC V4, 260-262) He found no discipline is available. This Court needs to decide if some should be.

Bush has contended that March has lied to many Courts including the U.S. Supreme Court. (Pet. at 12-17) March (and Mutch) also lied to (or mislead) the Federal District Court via his Motion to Dismiss and Summary Judgment.

> Motion For Judgment On The Pleadings/Summary Judgment And Request For Oral Argument. (Dated September 17, 1996. 1:96 CV 420)

"Defendants Zeeland Board of Education, Michael Z. Jones, Kenneth Harper, and Jay Klinge, by their attorneys, Miller, Johnson, Snell and Cummiskey, PLC, move this Court, pursuant to Rules 12(c) and/or 56 of the Federal Rules of Civil Procedure, for judgment on the pleadings/summary judgment in their favor and against plaintiff, Gerald Bush, on plaintiff's Complaint on the basis that there is no genuine issue as to a decisive material fact and defendants are entitled to judgment as a matter of law."

* * *

"This motion is based on plaintiff's Complaint and is supported by the Affidavit of Craig A. Mutch and defendants' Brief in Support of Motion for Judgment on the Pleadings/Summary Judgment, copies of which are attached hereto." (See also Mutch affidavit.)

March & Mutch argued in the Civil Rights case (WC V4 p 298-299) that res judicata, collateral estoppel, failure to state a claim and statute of limitations applied as a result of Bush's Tenure cases and prevented his civil rights suit.

They contended 28 USC 1738 and ***Kremer v Chemical Construction Corp.,*** 456 US 461, 72 L Ed 2d 262, 102 S Ct 1883, reh den (1982) applied. (Bf at p 17)

"Pursuant to 28 USC sec 1738, federal courts must give res judicata effect to state court judgments whenever the courts of the state from which the judgment emerged would do so. ***Kremer v Chemical Construction Corp.***, 456 US 461, 72 L Ed 2d 262, 102 S Ct 1883 (1982). Accordingly, in cases such as the present case, the decision of a state court reviewing an administrative determination is given res judicata effect and bars subsequent actions under Sections 1981, 1983 or 1985. ***Brown v St Louis Police Dep't***, 691 F2d

393, 396 (8th Cir. 1982)." (1:96 CV 420, Bf p 15)

Petitioner contends that the attorneys' arguments (these and others) were deliberate attempts to ditch the case by any means necessary - including deception. In support of this charge offers the following. It is clear that ***Kremer*** specifically concerned only Title VII, 42 USC 2000. Whether it was intended to apply to all civil rights cases is not stated. But, additionally, ***Kremer*** provided an avenue for collateral attack - if the state opportunity to litigate was not "full or fair". Bush attempted that attack, but was robbed of success by these attorneys and a judge willing to back them and their misconduct.

Additionally, ***Kremer*** held that unreviewed administrative agency determinations by state agencies do not preclude a trial de novo on such claims in federal court.

Plus, the Tenure Commission agency here is limited by State law to enforcement of the Act, MCL 38.137. (See 86a)

Also, civil rights cases have a right to a jury trial.

Subsequent to the dismissal Bush requested and was granted an extension of time to file the appeal by the District Court judge. Bush appealed timely within the time granted by the Judge. But the 6th Cir. clerk dismissed the appeal. Bush has often wondered if the veto of his appeal by the clerk was initiated by a call from these attorneys or a member of their law firm. Regardless, the net effect is that Bush never had an appeal by right to argue the merits or dispute the dismissal. But that is exactly the kind of "justice" the Respondent's attorneys prefer.

5. JUDICIAL VETO OF PRO SE CASES IS CONDONED BY THE MICHIGAN SUPREME COURT.

Petitioner and other pro se litigants have protested to the Michigan Supreme Court orally in person that

their rights were being quashed in the courts of the state. Their pleas fell on 100% deaf ears. The appeal decisions herein were reached *after* those pleas. Obviously, the state courts and judges never intend to do anything about it. Therefore, only the U.S. Supreme Court can now effect any change, fairness or Justice for pro se litigants in Michigan.

6. IN REGARD TO THE UNCONSTITUTIONAL TEACHER TENURE ACT AMENDMENTS, THE COURT SHOULD CONSIDER THAT THE MICHIGAN COURTS ARE POLITICAL IN NATURE AND THUS NOT UNBIASED WHEN IT COMES TO ISSUES CLOSE TO THE GOVERNOR'S HEART.

Although it is not essential to consideration of whether or not the Michigan Teacher Tenure Act amendments are constitutional, the Court should consider the political connections of the state judges who refused to review the question. Doing so, the Court will find that the judicial decisions in this case related to the Teacher Tenure Act amendments were politically correct, even though they violated the constitution. In other words, the Constitution has been overthrown for the sake of politics, power and position.

In this case the Governor, John Engler, is Republican and has expressed dislike for teacher tenure, as have many other Republicans. (See US News article). Additionally the Governor's legal counsel is the wife of one of the current State Supreme court justices - Taylor. (See news article)

Plus, at least 3, if not 4, of the presently sitting Michigan Supreme Court "justices" were initially appointed to the Michigan Court of Appeals by Engler. Then the 4 were also appointed, initially, to the Michigan Supreme Court. Engler has 100% discretion in this regard in contrast to the President of the United States who must gain Senate approval.

Besides being opposed to the Teacher Tenure Act, Engler (a lawyer) has long been opposed by the teacher's union - MEA - a politically active union. (Bush is not a member, but has been a politically active conservative.) The Tenure Act was amended in 1993 during Engler's term in office. One of the key sponsors of the Amendments was Rep. Bandstra (a lawyer, who also may have been appointed to the Court of Appeals by Engler, and is now Chief Judge. (See 22a) (Bush is not sure if Bandstra was appointed to the COA or appointed as Chief Judge by Engler, but believes it could be true, since it follows Engler's pattern of rewarding those who bear arms for his cause.)

Bandstra would not allow Bush's T5 case to be decided by a three judge panel of the Court of Appeals. See 22a and see Petition p 23. (What is the value of such "appeals"?)

Jones admitted that he had substantial input to the other chief sponsor of the Tenure Act amendments via Representative Dalman. (WC V5 p384-387)

But this Supreme Court, who is charged with the rendering Justice, should not let the politics of state officials interfere with Justice at any level. In fact, it should assure that Justice prevails and polical decisions are exposed like in ***Bush v Gore***, 121 S Ct 525 (2000) and ***Rutan v Republican Party of Illinois***, 497 US 62 (1990) whether Republican, Democrat or Green.

For if politics becomes the norm, America is nothing more than a Communist country with a sham Constitution backed only by lip service.

It is obvious that any supreme court (the Michigan Supreme Court specifically) that is unwilling to clean up its own house - regarding biased and incompetent judges and attorneys guilty of misconduct - is not likely to be willing to clean up the Governor's and legislature's constitutional violations. Especially when they have the Governor to thank for their chance at power, position and prestige. Biting the hand that feeds you is not accepted in politics. (Bush knows from his many

experiences with Jones.) But America is more than politics!

It is **"One Nation, under God, with Liberty and Justice for all."**

7. BUSH IS THE WHITE SLAVE OF JONES.

Yick Wo v Hopkins, 118 US 356, 30 L Ed 220, 226, 6 S Ct 1064 (1885) defined post 13th and 14th Amendment slavery.

> "For the very idea that one man may be compelled to hold his life, or the means of living, or any material right essential to the enjoyment of life, at the mere will of another, seems to be intolerable in any country where freedom prevails, as being the essence of slavery itself."

From the record it can be easily and clearly seen and confirmed that Bush has been the white slave of Mike Jones for the last 23 years, with Respondent's compliance. Will this Court put an end to this slavery?

CONCLUSION

In conclusion, Petitioner respectfully requests that for the sake of TRUTH, JUSTICE, LIBERTY and for AMERICA that the Petition be granted to review the substantial Constitutional and statutory violations and issues raised.

Date: August 2, 2001

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